IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

RSA.No. 103 of 2007()

AS.12/2003 of SUB COURT, KOYILANDY
OS.7/2001 of MUNSIFF COURT, KOYILANDY
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APPELLANT/RESPONDENTS/DEFENDANT
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1. SEKHARAN (DIED).

2. LEELA, W/O.SEKHARAN, AGED 57,
PULITHOLIMEETHAL HOUSE, ULIYERI AMSOM DESOM,
KOYILANDI TALUK.

3. SAJEEVAN, S/O.SEKHARAN, AGED 37,
PULITHOLIMEETHAL HOUSE, ULIYERI AMSOM DESOM,
KOYILANDI TALUK.

4. SHEEBA,D/O.SEKHARAN, AGED 34,
PULITHOLIMEETHAL HOUSE, ULIYERI AMSOM DESOM,
KOYILANDI TALUK.

5. SANDHYA, D/O.SEKHARAN, AGED 32,
PULITHOLIMEETHAL HOUSE, ULIYERI AMSOM DESOM,
KOYILANDI TALUK.

6. SAJINA, D/O.SEKHARAN, AGED 30,
PULITHOLIMEETHAL HOUSE, ULIYERI AMSOM DESOM,
KOYILANDI TALUK.

BY ADV. SRI.K.C.CHARLES
SRI.A.BALAGOPALAN
SRI.K.SANEESH KUMAR

RESPONDENT/ APPELLANT/PLAINTIFF

P.P.IMBICHIMAMMU, S/O.MAYI,
AGED 58, TEACHER, PRASANTH HOUSE,
ULIYERI P.O., ULIYERI AMSOM, DESOM,
KOYILANDI TALUK.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.171/07 IN RSA 103/07

DISMISSED

13/7/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PS to Judge.

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO.103 OF 2007

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Dated this the 13th day of July, 2007

JUDGMENT

Legal heirs of the original defendant in O.S.7/2001 on the file of Munsiff Court, Koyilandy are the appellants. Plaintiff is the respondent. Respondent instituted the suit seeking a decree for specific performance of Ext.A2 agreement for sale as well as a decree for permanent prohibitory injunction. Plaint schedule property admittedly belong to deceased defendant. Under Ext.A2 agreement, he agreed to sell the property for a consideration of Rs.2000/- and received the consideration and also agreed to execute the registerd sale deed after getting the original title deed from the bank on repayment of the subsisting loan. According to respondent, since the date of Ext.A2 agreement, the property covered under Ext.A2 is being used as the road leading to his house and respondent has no right to obstruct

the way and as he has paid the entire consideration, and so he is entitled to get the sale deed executed through court and also a decree for execution of the sale deed and also a decree for permanent prohibitory injunction. Defendant in the written statement admitted the execution of Ext.A2 agreement but contended that he never attempted to trespass into the property and he obtained the documents from the bank much earlier and respondent did not approach him to get a sale deed executed and the claim under Ext.A2 is therefore barred by time and respondent is not entitled to the decree sought for.

2. Learned Munsiff on the evidence of PW1 and Exts.A1 and A2 and C1 and C2 dismissed the suit holding that the suit is barred by time. Respondent challenged the decree and judgment before the Sub Court, Koyilandy in A.S.12/2003. On the death of the original defendant appellants herein were impleaded as additional respondents. Learned Sub Judge, on reappreciation of evidence found that

under Ext.A2 agreement plaint schedule property was in fact sold to respondent, though registered sale deed was not executed and the entire consideration for the property was paid under the document itself and respondent has nothing to be performed thereafter. Learned Sub Judge also found that the suit is within the period as the performance of the agreement was not refused by the defendant earlier and therefore granted a decree for specific performance of the agreement for sale as well as a decree for permanent prohibitory injunction. Appellants have challenged the decree and judgment in the second appeal.

3. Learned counsel appearing for appellants and learned counsel who appeared for respondent were heard.

4. The argument of learned counsel appearing for appellants is that under Ext.A2 agreement, the exact extent of the property is not shown and the consideration is only shown as Rs.2000/- per cent and if the property transferred thereunder exceeds

one cent, additional consideration has to be paid and in such circumstance, findings of the first appellate court that Ext.A2 establish a sale is not sustainable. Learned counsel also argued that as respondent was not prepared to pay the balance consideration and get the sale deed executed and twenty years elapsed from the date of Ext.A2, first appellate court should not have granted a decree for specific performance of the agreement for sale. Learned counsel also argued that Section 53A of Transfer of Property Act could only be used as a shield and not a weapon.

5. On hearing the learned counsel appearing for appellants I do not find any substantial question of law involved in the appeal. It is clear from Ext.A2 agreement that the plaint schedule property, which belonged to the deceased defendant was agreed to be sold to the respondent for a total consideration of Rs.2000/-. The identity of the property covered thereunder is clear from the document itself as the property

which is being used as a way leading to the property of the respondent. Commissioner has demarcated the plaint B schedule property as plot G O P H in Ext.C2 report and C1 plan. Hence identity of the way covered under Ext.A2 cannot be disputed. Ext.A2 shows that the total consideration payable for the property is Rs.2000/-. Though it was argued that it was only the value per cent, Ext.A2 does not provide that at the time of execution of the sale deed any other balance amount is to be paid depending on the extent to be determined later. On the other hand, recitals in the document shows that the consideration paid by respondent and received by defendant was the entire consideration. In such circumstance, I find no merit in the contention of the appellants that the property covered under Ext.A2 is not identifiable or that entire sale consideration was not paid. Under Article 54 of Limitation Act, a suit for specific performance of the agreement is to be filed within three years from the date fixed in the

agreement for performance of the agreement or if no time is so fixed within three years from the date plaintiff has notice of refusal of performance. Ext.A2 does not prescribe a time for performance of the agreement. On the evidence first appellate court found that the suit is filed within three years from the date of notice about refusal to perform the agreement. That factual finding cannot be interfered in exercise of the powers of this court under section 100 of Code of Civil Procedure. In such circumstance, as no substantial question of law is involved in the appeal, appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006